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May 15, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: January 7, 2008

Case Number: TSO-0589

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual's suspended access authorization should not be restored.

I. BACKGROUND

In April 2007, the DOE conducted a Personnel Security Interview with the individual (the 2007 PSI) regarding a November 2006 incident where he was charged with domestic violence. See Case Evaluation Sheet at 1, 5, DOE Exhibit 2. In addition, the individual was evaluated in September 2007 by a DOE-consultant psychiatrist (the DOE-consultant Psychiatrist), who issued a report setting forth his conclusions and observations. DOE Exhibit 15. In October 2007, the individual's access authorization was suspended. DOE Exhibit 2.

In November 2007, the Manager for Personnel Security of the DOE area office where the individual is employed (the Manager) issued a Notification Letter to the individual. Enclosure 2 to this letter, which is entitled "Information Creating a Substantial Doubt Regarding Eligibility for Access Authorization," states that the individual's behavior has raised security concerns under Sections 710.8(h) and (j) of the regulations governing eligibility for access to classified material (Criteria H and J). Specifically, the Enclosure states that the DOE-consultant Psychiatrist diagnosed the individual as meeting the criteria for "Alcohol Abuse", as

specified in the Diagnostic and Statistical Manual of Mental Disorders IV-TR (DSM-IV TR). He further concluded that this illness causes, or may cause, a significant defect in the individual's judgment or reliability.

Enclosure 2 also refers to the following information concerning the individual's alcohol-related arrests:

1. In November 2006, he was arrested and charged for Assault, Domestic Violence. He consumed approximately six beers prior to the arrest.
2. In October 1992, January 1991, October 1988 and November 1983, he was arrested and charged with DWI.
3. In January 1990, he was arrested and charged with possessing an Open Container.

Finally, the Notification Letter refers to the following statements made by the individual concerning his use of alcohol:

1. At his September 2007 psychiatric evaluation, he admitted to drinking to intoxication one to two times per week. He also admitted that he has had a problem with alcohol in the past and he "should probably stop drinking alcohol altogether."
2. At his 2007 PSI, he stated that as a result of his 1992 DWI, he was ordered by the court to quit consuming alcohol for six months to a year and was required to report weekly to a center and to take antabuse. He also admitted that his drinking has caused family conflict.
3. At both his 2007 PSI and his September 2007 evaluation, he stated that he plans to continue his current level of alcohol consumption despite jeopardizing his security clearance and his health.
4. In several interviews with the DOE, he has admitted that he "episodically abuses alcohol" and that he has a family pattern of alcohol abuse.

See Enclosure 2 to Notification Letter, DOE Exhibit 1.

The individual requested a hearing (hereinafter "the hearing") to respond to the concerns raised in the Notification Letter. In his initial written response to those concerns, the individual asserted

that he disputed the DOE-consultant Psychiatrist's finding that he met the DSM-IV TR's standards for an alcohol disorder. However, he also asserted that he has abstained from all alcohol use since October 14, 2007, has commenced participation in Alcoholics Anonymous (AA), and is committed to a future of abstinence from alcohol.

The hearing in this matter was convened in March 2008. At the hearing, the testimony focused on the DOE-consultant psychiatrist's diagnosis and the individual's efforts to document his period of abstinence from alcohol, his rehabilitation activities, and the extent of his commitment to future sobriety.

II. HEARING TESTIMONY

At the hearing, testimony was received from nine persons. The DOE presented the testimony of the DOE-consultant Psychiatrist. The individual, who was represented by counsel, testified and presented the testimony of his licensed professional counselor (the individual's Counselor), his AA sponsor, his wife, his brother, and his manager. At the hearing, the individual introduced medical records indicating that he had completed an outpatient treatment program for depression and alcohol dependence in December 2007, along with follow-up psychiatric evaluations conducted by his treating psychiatrist (the individual's psychiatrist). Individual's Hearing Exhibit 1. The individual also submitted job performance summaries and AA attendance sheets. Individual's Hearing Exhibits 2 and 3.

A. *The DOE-Consultant Psychiatrist*

The DOE-consultant Psychiatrist testified that when he evaluated the individual in September 2007, the individual rationalized his drinking and denied that alcohol currently was a problem in his life. TR at 14-17. He stated that he administered several psychological surveys to the individual, and that his responses indicated problems with alcohol and a high degree of defensiveness. TR at 20. In particular, he stated that the individual's responses on the Mini Patient Health Survey (MPHS) indicated that the individual had consumed more alcohol than he planned, that he had failed in attempts to cut back on his drinking, and that he knew that alcohol has caused him problems. TR at 24-25. He stated that the individual admitted to drinking eighteen to thirty beers a week, and that he last drank the Friday before the evaluation. TR at 17-18.

The DOE-consultant Psychiatrist concluded that based on the individual's past legal and family problems with alcohol, his current usage, and the alcohol problems revealed by the MPHS and other surveys, he found that the individual met the DSM-IV TR criteria for alcohol abuse. TR at 22.

The DOE-consultant Psychiatrist testified that in his report, he indicated his opinion that if the individual engaged in a rehabilitation program, two years of absolute abstinence would be necessary to show adequate evidence of reformation from Alcohol Abuse. TR at 27.

B. *The Individual*

The individual testified that he recognizes that his misuse of alcohol was a factor in the November 2006 domestic violence incident involving his wife. He stated that getting his clearance pulled in October 2007 "hit me like a ton of bricks", and he stopped consuming alcohol on October 14, 2007. TR at 199, 218. He testified that he has not consumed alcohol since that date. TR at 219. He stated that the situation concerning his clearance made him feel very anxious and depressed, and that, in December 2007, he enrolled in an outpatient treatment program to address his depression, anxiety and alcohol issues. He stated that the outpatient program lasted three hours a day, three days a week for three weeks, and involved mood assessment exercises and group discussions of triggers, anger management and sobriety. TR at 200-202.

The individual testified that the program was centered around obtaining a psychiatrist and a counselor, which he did during the third week of the program. TR at 201. He stated that the outpatient program helped him to understand his problem with alcohol for the first time, and that he is gaining additional insights through participation in AA and from reading the AA Agnostics book. TR at 203. He testified that he now is convinced that he is an alcoholic. TR at 215. He stated that he agrees with the DOE-consultant Psychiatrist and his own psychiatrist that he has a diagnosable alcohol disorder. TR at 216.

The individual stated that he first attended an AA meeting on December 19, 2007, and has been keeping a log of his attendance with the goal of attending ninety AA meetings during a ninety day period. TR at 196, 199, Individual's Hearing Exhibit 3. He testified that "I'm not quite there yet." *Id.* He testified that about ten days after he began attending AA, he selected an AA sponsor. He stated that his sponsor has a good focus and

direction, and is very sincere about his own sobriety. He testified that this has helped him to believe in the AA program. TR at 197. He stated that he now has no desire to consume alcohol, that he is feeling less stressed, and that his relationship with his wife has improved. TR at 205. He testified that they no longer keep alcohol in their home. TR at 213.

The individual testified that he and his wife have experienced considerable stress in their relationship because of the aberrant behavior of his adult stepdaughter, and that an argument relating to the stepdaughter caused the 2006 domestic violence incident. He stated that he believes that his alcohol consumption was a factor in that incident. TR at 195. He stated that there have been no other incidents of physical violence in his marriage. *Id.* He indicated that although his stepdaughter's behavior continues to generate concern, he has detached himself emotionally from the situation. TR at 209.

The individual testified that he has made a personal commitment to sobriety, and does not intend to resume drinking under any circumstances. TR at 217. He stated that his sobriety has allowed him to feel happier and to spend quality time with his step-grandchildren. TR at 223.

C. The Individual's Counselor

The individual's Counselor testified that after the individual successfully completed his outpatient treatment, the individual was referred to him for ongoing counseling for his depression and his alcohol problem. TR at 101. He stated that he agreed with the DOE-consultant Psychiatrist's diagnosis of Alcohol Abuse that approaches Alcohol Dependence. TR at 108-109.

The Counselor testified that after completing the outpatient program, the individual was no longer in denial about his alcohol problem. TR at 101. He stated that the individual is staying sober and following a treatment plan that includes frequent AA attendance, discussions with his AA sponsor, and counseling sessions. TR at 102. He testified that he and the individual have met weekly or biweekly for about eight sessions, and that they plan to continue. He stated that he also has started to meet with the individual's wife in an effort to resolve the family issues relating to her daughter. TR at 117-118, 114.

The individual's Counselor stated that he believes that the individual's current prognosis is good, and that he is in remission from alcoholism and depression. TR at 114. He stated that the

individual now has the tools to maintain sobriety, and described his chances of relapsing at the present time as "minimal". TR at 135. He stated that the individual has less than the average risk of relapse at about six months of sobriety because of his good motivation and his effective treatment program. However, he stated that this risk of relapse will continue to decline through the first 12 months of sobriety and thereafter as the individual's stability in his practice of sobriety becomes stronger. TR at 136-137. He estimated that there is "less than a 30 percent chance" of the individual's relapsing in the next year. TR at 138.

D. The Individual's AA Sponsor

The individual's AA sponsor testified that he first met the individual at an AA meeting in December 2007 and that he has been sponsoring the individual for about three months. He described the individual as honest, open-minded and willing, with no reluctance to commit to the AA program. The AA sponsor stated that he sees his role as guiding the individual through the AA steps. He testified that the individual has completed the first three steps, and is now making a moral inventory of his life. TR at 65-68.

The AA sponsor testified that he believes that the individual is sincerely committed to changing his life, and that his commitment is reflected by his active involvement in AA meetings and by the frequency of his attendance. He stated that the individual is attending at least six AA meetings a week. TR at 73-75. He testified that the individual uses a sobriety date of October 14, 2007, and he has no reason to believe that this date is inaccurate. TR at 89.

E. The Individual's Wife

The individual's wife testified that she and the individual have been married for eleven years. She stated that prior to October 2007, she and her husband occasionally drank substantial amounts of beer. TR at 169-170. She stated that their only physically violent dispute occurred in November 2006, during a domestic argument about her daughter. She testified that their use of alcohol was a factor in the escalation of the argument to violence. TR at 176-177.

She stated that the individual decided to stop drinking in early October 2007. TR at 178, 189. She testified that she has stopped drinking herself, and that they no longer keep alcohol in the house. TR at 178-182. She stated that the individual attends AA meetings very faithfully, calls his AA sponsor regularly, and sees

his Counselor and his psychiatrist. TR at 182. She testified that she also has seen the Counselor to discuss family issues. TR at 183.

F. The Individual's Brother

The individual's brother testified that he lives about three miles from his brother and that they keep in "pretty regular touch" by telephone. He stated that he believes that he last saw his brother consume alcohol sometime in mid 2007. TR at 168. He stated that around Thanksgiving 2007, he commented to the individual that he looked thinner, and the individual told him that he had quit drinking, and that he had not had a drink in quite a while. TR at 163. He testified that he has not visited the individual's home since December 2007, but that when he and the individual had lunch together recently, the individual did not consume alcohol. TR at 167. He stated that when he spoke to the individual by telephone about a week and a half prior to the hearing, the individual told him that he had just attended his 80th AA meeting. TR at 166.

G. The Individual's Manager

The individual's manager testified that he has known the individual for eleven years and supervised him for five or six years. He stated that he has no contact with the individual outside the workplace. He testified that he has never seen the individual consume alcohol, or exhibit any impairment from alcohol in the workplace. He stated that the individual has had no problems involving attendance or tardiness in the workplace, and that he is considered a good employee. The individual's manager testified that since the individual's clearance was suspended in October 2007, he and the individual do not work in the same area. He now sees the individual about once a week, and has observed nothing unusual in his demeanor on those occasions. TR at 145-153.

H. The DOE-consultant Psychiatrist's Additional Testimony

After hearing the testimony of the other witnesses, the DOE-consultant Psychiatrist stated that he is impressed with the changes in the individual since his September 2007 evaluation. He stated that the individual now has accepted his alcohol problem and has logged over five months of intensive rehabilitation activities. He testified that the individual has built a safety net that includes his five months of sobriety, attendance at AA meetings six or seven times a week, individual and family counseling, and cooperation from his wife, who also has stopped drinking. TR at 221-222, 226.

The DOE-consultant Psychiatrist stated that the individual's risk of relapse is better than average for persons with five months of sobriety, but that it remains unacceptably high. He stated that the individual's risk of relapse will decline after twelve months of sobriety when the individual achieves sustained remission from his diagnosis of Alcohol Abuse. TR at 226. Although his September 2007 report states that the individual needs two years of sobriety to demonstrate rehabilitation, the DOE-consultant Psychiatrist testified that he now is confident that if the individual continues on his current path for twelve months, he will be a safe risk for maintaining his sobriety in the future. TR at 227.

III. APPLICABLE STANDARDS

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a presumption against granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security test" for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. *Personnel Security Hearing* (Case No. VSO-0002), 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. *Personnel Security Hearing* (Case No. VSO-0005), 24 DOE ¶ 82,753 (1995), *aff'd*, 25 DOE ¶ 83,013 (1995). See also 10 C.F.R. § 710.7(c).

IV. ANALYSIS

A. *Diagnosis*

At the hearing, the individual's attorney questioned the DOE-consultant Psychiatrist at length regarding whether his diagnosis meets the criteria for Alcohol Abuse set forth in the DSM-IV TR. The DOE-consultant Psychiatrist firmly maintained that his diagnosis of Alcohol Abuse is appropriate. See TR at 28-55. Moreover, the individual's Counselor also testified that the individual meets the DSM IV TR criteria for Alcohol Abuse, and the individual's medical records indicate that the working diagnosis being used by the individual's psychiatrist is Alcohol Dependence. See TR at 108-109, Individual's Hearing Exhibit 1. In addition, the individual himself admits that he is an alcoholic, and has engaged in a full scale recovery program. Given these facts, the numerous challenges put forward by the individual's attorney concerning the DOE-consultant Psychiatrist's diagnosis make little sense. I find that there is agreement among the medical professionals that the individual suffers from an alcohol disorder at least as severe as Alcohol Abuse. I therefore turn to the issue of whether the individual has demonstrated rehabilitation from his Alcohol Abuse.

B. *Rehabilitation*

The individual has provided significant evidence to mitigate the concerns regarding his Alcohol Abuse. I find that the testimony and evidence presented at the hearing provides sufficient corroborative support for the individual's assertion that he has been abstinent from alcohol since October 14, 2007. The individual provided his own convincing testimony on this point. Further, the individual's wife testified that he ceased drinking at about that time, his AA sponsor testified that the individual uses October 14 as his sobriety date, and his brother recalled that the individual told him in November 2007 that he had not been drinking for "quite a while". The individual's claim of ongoing sobriety also is supported by the frequency of his participation in recovery activities in recent months. Therefore, I find that, as of the date of the hearing, the individual had been abstinent from alcohol since October 14, 2007, a period of a little more than five months.

I was impressed with the individual's testimony that he is engaged in a full schedule of recovery activities. Beginning in early December 2007, the individual successfully completed a three-week outpatient treatment program, and since then he has attended AA meetings on almost a daily basis. In addition, he has weekly

discussions with his AA sponsor and weekly or biweekly sessions with his Counselor concerning alcohol and family issues. He also testified that he is committed to abstaining from alcohol in the future.

Nevertheless, the security concerns have not been fully resolved. At the hearing, the DOE-consultant Psychiatrist testified that the individual has made excellent progress in his recovery, and that if he remains engaged in his recovery activities, he can be considered rehabilitated from alcohol abuse one year from his sobriety date of October 14, 2007. The individual's Counselor also believes that the individual is making excellent progress. However, he estimated the individual's current risk of relapse at about thirty percent, and he indicated that the individual's risk of relapse would decline further after a year of sobriety and continued involvement in recovery activities.

Overall, I was convinced by this expert testimony. See, e.g., *Personnel Security Hearing (Case No. VSO-0015)*, 25 DOE ¶ 82,760 (1995) (Hearing Officer gave deference to expert medical opinion in finding that rehabilitation was not established). In general, medical professionals believe that remaining sober for a full year is a significant watershed in the process of reaching rehabilitation and reformation, and a good indicator of commitment to sobriety. See *Personnel Security Hearing (VSA-0298)*, 28 DOE ¶ 83,002 (2000), and cases cited therein at 86,506. In this instance, my positive assessment of the individual's demeanor and of the evidence presented at the hearing convince me that the individual is highly committed to his ongoing sobriety, and that he is developing the personal skills and support network necessary to maintain his sobriety. However, this positive evidence does not convince me that the individual's current period of sobriety of five and one-half months is sufficient for the individual to demonstrate that he is at low risk for relapsing into alcohol use.

1/ Moreover, in the present case, the individual's Counselor

1/ In this regard, I note that medical professionals often require a full year of abstinence to establish rehabilitation, because a one year abstinence period allows an individual to go through a sufficient number of ups and downs that normally occur within a year to test whether he can withstand normal stresses without turning to alcohol. See *Personnel Security Hearing (Case No. TSO-0150)*, 29 DOE ¶ 82,800 at 85,756 (2005). In the present case, with only five and a half months of sobriety at the time of the hearing, the individual has not yet dealt with all of the seasonal activities and stressors that can trigger relapses.

acknowledges that the individual's family situation involving his step-daughter is an ongoing source of stress and a challenge to the individual's coping abilities. I therefore concur with the DOE-consultant Psychiatrist's conclusion, and find that a full year of recovery activities is necessary to establish that the individual can cope with this additional stress and thereby demonstrate that he is at a low risk for relapse. Accordingly, I find that the individual's access authorization should not be restored at this time.

V. CONCLUSION

For the reasons set forth above, I find that the individual suffers from alcohol abuse subject to Criteria (h) and (j). Further, I find that this derogatory information under Criteria (h) and (j) has not been mitigated by sufficient evidence of rehabilitation and reformation. Accordingly, after considering all of the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has not demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. It is therefore my conclusion that the individual's access authorization should not yet be restored. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: May 15, 2008